



17 NOV 2008

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MICHAEL BEST & FRIEDRICH LLP
100 E Wisconsin Avenue
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Milwaukee, WI 53202

In re Application of
NIZZERE *et al*
U.S. Application No.: 10/590,815
PCT No.: PCT/US2005/006414
Int. Filing Date: 28 February 2005
Priority Date: 27 February 2004
Docket No.: 074408.9007-01
For: SCALE

**DECISION ON
PETITION
UNDER 37 CFR 1.47(a)**

This decision is in response to the papers filed 19 September 2008 which are treated as a renewed petition under 37 CFR 1.47(a).

BACKGROUND

On 19 February 2008, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed. Applicants were given two months to respond.

On 07 July 2008, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed for failing to respond to the Decision on Petition mailed 19 February 2008.

On 19 September 2008, applicants filed the renewed petition which was accompanied by, *inter alia*, a five-month extension and fee, a declaration executed by five of the seven named inventors, a declaration of G. Christopher Braidwood, and Exhibits A and B.

DISCUSSION

Notification of Abandonment

The Form PCT/DO/EO/909 mailed 07 July 2008 was sent in error. Applicants have extendable rights pursuant to 37 CFR 1.136(a) to respond to the prior decision.

As such, the Form PCT/DO/EO/909 is hereby **VACATED**.

Renewed Petition Under 37 CFR 1.47(a)

Petitioners allege that Matthew Lawler and Theron Kotze cannot be located. A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the

missing joint inventor(s) cannot be located or refuse to cooperate; (3) a statement of the last known address(es) of the nonsigning joint inventor(s); (4) and an oath or declaration executed by the signing joint inventor(s) on their behalf and on behalf of the nonsigning joint inventor(s). Item (2) and (4) were not satisfied in the initial petition.

Regarding item (2), petitioners submitted a declaration by Mr. Braidwood who states that he conducted internet searches for the two nonsigning inventors to no avail. Documentary evidence of these searches were provided. This evidence along with the previously filed evidence in the original petition is sufficient to satisfy item (2) of 37 CFR 1.47(a).

Concerning item (4), petitioners included a declaration signed by five of the seven joint inventors listed on the international publication. All required information including the nonsigning co-inventors' names, residences, post office addresses and citizenship are typed on the declaration. The declaration is in compliance with 37 CFR 1.497(a) and (b). Item (4) of 37 CFR 1.47(a) is now satisfied.

All items of 37 CFR 1.47(a) are complete.

CONCLUSION

Applicants' renewed petition under 37 CFR 1.47(a) is **GRANTED**.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 28 February 2005 under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 19 September 2008.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record and will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



James Thomson
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Theron Kotze
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Chicago, IL 60613

In re Application of
NIZZERE *et al*
U.S. Application No.: 10/590,815
PCT No.: PCT/US2005/006414
Int. Filing Date: 28 February 2005
Priority Date: 27 February 2004
Docket No.: 074408.9007-01
For: SCALE

Mr. Kotze:

You are named as an inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. The counsel for the applicant is listed below. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

A handwritten signature in cursive script, appearing to read "James Thomson".

James Thomson
Attorney Advisor
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Matthew Lawler
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In re Application of
NIZZERE *et al*
U.S. Application No.: 10/590,815
PCT No.: PCT/US2005/006414
Int. Filing Date: 28 February 2005
Priority Date: 27 February 2004
Docket No.: 074408.9007-01
For: SCALE

Mr. Lawler:

You are named as an inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. The counsel for the applicant is listed below. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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